**REMARKS**

The following remarks are responsive to the Official Action mailed September 13, 2006.

In the Official Action, claims 1-5, 8-15, 17, 20-24, 26-29, 33-37, and 39-42 are rejected under 35 U.S.C. § 102(b)as being anticipated by U.S. Patent No. 5,749,876 to *Duvillier et al*.

Of the claims previously mentioned, claims 1, 5, 8, 11, 27, 41 and 42 are independent. Claims 1, 5, 27 and 42 include the recitation or a recitation directed to similar subject matter regarding a "hole guide containing a plurality of hole guides arranged in a pattern generally corresponding to the desired shape of the bone graph." In operation, a bone or bone graph is positioned within the main body of a bone graft forming guide. A hole guide is then inserted into a portion of a main body with the plurality of hole guides on the singular hole guide being aligned with the bone at a position where the surgeon desires to cut the bone. A boring element may then be inserted into individual holes of the plurality of hole guides so as to create indentations within the bone along the desired border. Afterwards, the hole guide may be removed and a cutting guide into a slot previously occupied by the hole guide. The cutting guide may receive a cutting instrument that enables a surgeon to follow along the path created by the recesses or indentations in the bone so as to cut the bone to a desired shape.

Claim 1 and claim 5 include a recitation directed towards a hole guide containing a plurality of hole guides that enable the bone graph forming guide to follow out the above process. In claim 27, a similar device, a pattern guide facilitates forming a pattern in the bone graph material and in claim 42, a means clause is used for forming a pattern of bores in the bone graft material. The pattern of bores correspond to

a desired shape of the bone graft. Therefore, each of these independent claims includes a recitation directed to a hole guide as for example shown in FIGS. 7A and 7D of the present application. The hole guide includes a plurality of holes that are aligned with the desired shape of the bone graft.

Paragraph [0044] of the present application describes various examples of a hole guide that may be used to form a plurality of holes in a graft material.

The Examiner contends that *Duvillier* discloses a similar device and specifically highlights a insertable hole guide (46) containing a plurality of linear hole guides arranged in a pattern and insertable cutting guide (30) containing slots (31) as support for his assertion, (Office Action: 3). With all due respect to the Examiner, Applicants respectfully traverse the Examiner's rejection.

*Duvillier* does not show any element that may be perceived as being substantially similar to the hole guide of the present invention. *Duvillier* discloses a cutting instrument for the femur. The cutting instrument includes a support element 14 and three parallel parallelepipedal blocks 21, 24, and 30. Each of the blocks may be positioned within the support element 14 such that protrusions extending outwardly from each of the blocks are captured within longitudinal slots 19 of the support element. Each of the blocks includes various slits that correspond to desired cuts of an end of a femur. For instance, the first block 21 includes slit 22 that is designed to affect a horizontal cut in the lower part of the condyles of a femur. Similarly, block 24 includes longitudinal slits 25 and 26, which are designed to allow the pattern of cutting blades able to form a cut in the condyles called a double posterior cut and the beveled anterior cut.

Block 30 also includes a slit 31 that is designed to affect a horizontal or substantially horizontal cut inclined

slightly upwards enabling the guide to help aid in forming an anterior cut in the upper part of the condyles. Block 30 may also be attached to a means 42 by angular adjustment of itself as well as the various other devices. The means 42 includes a plate 46 having small cylindrical bores 49 extending therethrough. The small cylindrical bores 49 may be aligned with bores 43 in the block 30. By placing a small pin 53 through bores 43 and 49, the block 30 may be aligned correctly with a mechanical axis of a femur. (*Duvillier*, 7:4-24.) The Examiner asserts that the plate 46 is equivalent to the insertable hole guide or equivalent features as included within independent claims 1, 5, 27 and 42 as discussed above and the Examiner asserts that the intended use in other functional statements, directed to the insertable hole guide, do not impose any structural limitations on the claims distinguishable over *Duvillier*. (Office Action: 3) However, the Examiner has not addressed the recitation that the hole guide or equivalent features includes a plurality of hole guides arranged in a pattern and generally corresponding to the desired shape of a bone graft. This additional structure specifically calls out that the plurality of hole guides are arranged in a certain pattern. This language is not functional and does impart structural limitations within the claims which they are included. In contrast, the holes in the metal plate 46 in *Duvillier* are simply aligned along an axis and are not patterned in any specific way, in regard to the desired shape of the bone graft. Thus, Applicants assert that independent claims 1, 5, 27 and 42 are patentably distinct from *Duvillier* and should be deemed allowed. Similarly, the claims that depend from claims 1, 5, 27 and 42 should also be deemed allowed based on their dependency from these claims.

Independent claims 8, 11 and 41 are also rejected in view of *Duvillier*. In response to this rejection, Applicants

have cancelled claims 8-10 and independent claim 41 thereby rendering their rejections moot. Further, Applicants have amended claim 11 so as to include a recitation directed to the instrument having a body that includes a first member and a second member pivotally connected to one another. Applicants assert that this recitation distinguishes claim 11 as well as its dependent claims from *Duvillier*. *Duvillier* discloses two arms that extend outwardly from a device so as to house an end of a femur between the arms. The arms are not pivotally connected to each other as now included within independent claim 11. Applicants therefore assert that claim 11 as well as their dependent claims are patentably distinct from *Duvillier*.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By_____

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